IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.1187 OF 1991

Manubhai Desai,
of Bombay Indian inhabitant
residing at Gulam Mohd. Chawl,
Room No.15, Khotwadi (Bhimwada)
Santacruz (W), Bombay-400054. Petitioner

vs.

1. The State of Maharashtra
through its Ministry of
Education, Mantralaya,
Bombay.

2. Education Officer,
State of Maharashtra,
Mantralaya, Bombay-400 020.

3. Educational Inspector,
(West Zone), Greater Bombay.

4. The Head Mistress,
Kalina Education Society
B-36-141, Sunder Nagar,
Kalina Santacruz (East),
Bombay 400 098.

5. Head Master,
Air India Modern School,
Kalina, Bombay 400 098. Respondents

Ms.Sushmita Debbarman i/b.Mr.Mihir Desai for the petitioner.

Ms.Mugdha Jadhav, A.G.P. for the respondent nos. 1 to 3.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 21st July 2005

ORAL JUDGMENT (Per R.M.Lodha,J.)

The only question that calls for determination in

this writ petition is whether the petitioner's claim for pay fixation was rightly refused on the ground of non-availability of original service book.

2. The aforesaid question arises in the facts and circumstances which we may briefly indicate hereinafter:

(i) The petitioner is S.S.C. and certificate holder for Physical Education.

(ii) The petitioner joined Esmail Begmohammed High School, Mohammedali Road, Bombay as Assistant Teacher in P.T. with effect from 26th June 1968. He continued working there until 31st December 1971. His salary in the year 1970-71 was fixed at Rs.132/- and in the year 1971-72 he was given an increment of Rs.8/- fixing his pay at Rs.140/- per month.

(iii) The petitioner joined Saifi High School, Pydhonie as Assistant Teacher, P.T. with effect from 12th June 1972. He worked there upto 7th December 1972 and his pay was fixed at Rs.140/-.

(iv) The petitioner joined Forjet High School with effect from 8th December 1972 as Assistant Teacher, P.T. in the pay scale of Rs.120-220 and his pay was fixed at Rs.140/-. The petitioner worked in this school until

10th June 1973.

(v) The petitioner joined J.D. Bhrda High School as Assistant Teacher P.T. on 11th June 1973 and continued there upto 31st July 1974. His salary was fixed at Rs.132/-.

(vi) The petitioner joined the Air India Modern School at Kalina on 24th July 1974 and he worked there upto 13th June 1976. His pay was fixed at the scale of Rs.128/-.

(vii) The petitioner joined Sir J.J.Forte High School on 14th June 1976. He remained in service there upto 12th June 1977. His pay was fixed at Rs.134/- and later on given increment of Rs.4/- and thus his pay was fixed at Rs.138/-.

(viii) From 13th June 1977 the petitioner was employed with the National Education High School. He worked there until 31st July 1979. His pay was fixed at the bottom of the revised pay scale at Rs.290/- per month.

(ix) The petitioner then joined Our Lady of Perpetual Succour High School, Chembur as Assistant Teacher on 4th January 1980. He worked there until 23rd November 1980. The break in service of about 6 months was condoned.

(x) From 24th November 1980, the petitioner joined Santam Dharma High Secondary School. He worked in this school upto 26th April 1981. His pay was initially fixed at Rs.290/- in the pay scale of Rs.290-540. Subsequently he was given notional pay scale of Rs.310/-.

(xi) The petitioner joined Air India Modern School with effect from 22nd June 1981. He continues to be working in this school. His pay was fixed at Rs.290/-. He was given normal increment. After overall and general revision in the pay scale, his basic pay was fixed at Rs.1230/- per month.

3. The petitioner took up the matter for his pay fixation before the concerned authorities. On 8th April 1985 the petitioner made a representation to the Education Inspector, West Zone, Greater Bombay (respondent no.3) regarding his pay fixation as per Bhole Commission and also the increment. The correspondence ensued between the petitioner and the Education Inspector and also the petitioner and the Educational institutions where the petitioner had worked and was working. By the communication dated 15th March 1989/20th March 1989, the Senior Auditor, Greater Bombay (North), Bombay wrote to the respondent no.4-Kalina

Education Society that since the petitioner was employed with the respondent no.5-Air India Modern School as Assistant Teacher on and from 1st April 1976, his pay fixation should be got done from Senior Auditor, Western Zone, Jogeshwari. Ultimately, by the communication dated 28th August 1989, the Senior Auditor (Education) Greater Bombay, Bombay wrote to the Air India Modern School that the petitioner's pay fixation cannot be done as service book was not sent in original and the pay fixation could not be done on duplicate copy. Constrained thereby the petitioner has approached this Court by filing the present writ petition.

4. The reply affidavit has been filed by the Deputy Education Inspector, West Zone, Greater Bombay and broadly the aforestated facts have not been denied.

5. Since the concerned authority has refused to have the petitioner's pay fixed because original service book was not sent by the respondent no.5-school, the only issue that we have to consider is whether the action of the respondent no.3 was justified.

6. Certain guidelines have been framed about maintaining the service books of the employees in private secondary schools. Paragraph 3 of the Appendix Fourteen (Vide Rule 67.5) provides thus:

"3. Whenever a teacher or non-teaching employee leaves the school, he should be given proper discharge certificate. While leaving the school, the concerned school should complete all the entries in the service book and stamp and given it in the custody of the teacher and the original service book should be kept by the school to itself. Whenever teacher or non-teaching employee joins another school after leaving the previous school then the school should ask for the original copy of the service book from the previous school and then the same be continued further. The concerned teacher is also expected to carry out correspondence with the previous school in this respect and till such time, should produce his copy of service book with the employer school along with the discharge certificate. The new school should arrange necessary entries in the second copy of the service book from time to time. So also till the original service book is obtained from the previous school, the decisions regarding leaves, pay fixation etc be taken on the basis of the copy of the service book produced by the teacher."

7. From the perusal of the aforesaid provision, it would be apparent that pay fixation can be done on the basis of the copy of the service book produced by the teacher. Admittedly, the copy of the service book was sent by the respondent no.5-school to the concerned authority because the original service book was not traceable/not available. Not only that there was no impediment in having the petitioner's pay fixed on the basis of the copy of the petitioner's service book sent by the respondent no.5-School but also in the light of the aforenoted guidelines as a matter of law the concerned authority ought to have fixed the petitioner's

pay. If any clarification or information was required that could have been elicited from the schools where the petitioner was employed from time to time. The action of the concerned authority in refusing to have the petitioner's pay fixed, because original service book was not available is, thus, wholly unjustified.

8. We, accordingly, remit the matter back to the respondent no.3 or for that matter the Senior Auditor (Education), West Zone, Greater Mumbai to fix the petitioner's pay on the basis of the duplicate copy of service book forwarded by the respondent no.5. The entire exercise must be done by the respondent no.3 or for that matter the Senior Auditor (Education), West Zone, Greater Mumbai within six months from the date of the production of the certified copy of this order.

9. Rule is disposed in the aforesaid terms. No costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)